

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAMONE ISAAC WILSON,

Defendant-Appellant.

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UNPUBLISHED

March 27, 2007

No. 268417

Oakland Circuit Court

LC No. 2003-190315-FC

Before: Zahra, P.J. and Bandstra and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carjacking, MCL 750.529a, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to a prison term of 15 to 60 years for the carjacking conviction and a consecutive two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erroneously denied his motion for a directed verdict on the felony-firearm charge.

In ruling on a motion for a directed verdict, the trial court must consider in the light most favorable to the prosecutor the evidence presented by the prosecutor up to the time the motion is made and determine whether a rational trier of fact could have found that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). This Court applies the same standards in reviewing the trial court's ruling. *Schultz*, *supra*.

The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of a weapon may be actual or constructive and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). "[A] person has constructive possession if there is proximity to the article together with indicia of control. Put another way, a defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant." *Id.* at 470-471 (citation omitted).

Where an accomplice simply displays a weapon while the defendant commits an offense, the defendant does not have constructive possession over the weapon because he does not control the weapon in the accomplice's hands. *People v Benard*, 138 Mich App 408, 410-411; 360 NW2d 204 (1984). In this case, however, the evidence showed when the victim did not willingly submit, defendant directed his accomplice to "show her the gun." The accomplice obeyed, pulling out a weapon and pointing it at the victim. This evidence was sufficient to show that defendant had the right to control the use of the weapon held by his accomplice. Thus, the trial court did not err in denying defendant's motion.

Defendant next argues that the trial court improperly denied his request to adjourn sentencing to accommodate newly retained counsel.

A trial court's decision affecting a defendant's right to counsel of choice is reviewed for an abuse of discretion. *People v Akins*, 259 Mich App 545, 556; 675 NW2d 863 (2003). A trial court's decision on a motion for an adjournment or continuance is also reviewed for an abuse of discretion. *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002); *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003). An abuse of discretion occurs when the trial court's decision results in an outcome falling outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

The Sixth Amendment directly guarantees the right to counsel in all criminal prosecutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Marsack*, 231 Mich App 364, 372; 586 NW2d 234 (1998). A criminal defendant "has a constitutional right to defend an action through the attorney of his choice." *People v Portillo*, 241 Mich App 540, 543; 616 NW2d 707 (2000). However, this right is not absolute and is subject to being balanced against the effective administration of justice. *Akins*, *supra* at 557.

When reviewing a trial court's decision to deny a defense attorney's motion to withdraw and a defendant's motion for a continuance to obtain another attorney, we consider the following factors: 1) whether the defendant is asserting a constitutional right, 2) whether the defendant has a legitimate reason for asserting the right, such as a bona fide dispute with his attorney, 3) whether the defendant was negligent in asserting his right, 4) whether the defendant is merely attempting to delay trial, and 5) whether the defendant demonstrated prejudice resulting from the trial court's decision. [*People v Echavarria*, 233 Mich App 356, 369; 592 NW2d 737 (1999).]

The trial court did not abuse its discretion in denying defendant's request to adjourn sentencing to accommodate attorney Henry. The record clearly shows that the court was willing to allow Henry to appear on defendant's behalf as long as she was willing to proceed with sentencing. The court's decision not to adjourn sentencing was reasonable. Defendant did not offer any reason for discharging attorney Sabbota, who was prepared to go forward with sentencing. Further, defendant waited until the day of sentencing to request substitution of counsel even though he had been advised of the sentencing date a month in advance. Finally, defendant has not shown that he was prejudiced by the trial court's ruling. Henry sought an adjournment to review the scoring of the guidelines for possible error. However, Sabbota challenged the scoring of the guidelines and succeeded in substantially reducing the minimum sentence range. Defendant has not shown that there were other viable challenges that would

have resulted in a lower minimum sentence range. Therefore, the trial court did not abuse its discretion in denying the request for an adjournment of sentencing.

Affirmed.

/s/ Brian K. Zahra

/s/ Richard A. Bandstra

/s/ Donald S. Owens